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14 **UNITED STATES BANKRUPTCY COURT**  
15 **DISTRICT OF ARIZONA**

16 In Re:  
17 C.M.B. III, L.L.C.,  
18 Debtor.

Case No. 2:10-bk-30496-GBN

Chapter 11 Proceedings

**OBJECTION TO DEBTOR'S PLAN OF  
REORGANIZATION**

**[Relates to Docket No. 96]**

19 Maricopa County Treasurer ("MCT"), a secured tax lien creditor, by and through  
20 its undersigned counsel, hereby objects to confirmation of *Debtor's Plan of*  
21 *Reorganization* filed on February 7, 2011 (the "Plan"). MCT objects to confirmation of  
22 the Plan as it (1) fails to include a provision that MCT shall retain its liens for unpaid  
23 property taxes until such time as the taxes and any related interest is paid in full, and (2)  
24 fails to clearly provide for the accrual of post-petition interest on MCT's secured tax claim  
25 at the statutory rate.

26 **1. MCT's Secured Tax Claims:**

27 On October 6, 2010 MCT filed a secured tax claim in the amount of \$527,762.94  
28 representing the 2010 real property taxes due on parcels 149-23-022, 149-23-023, 149-  
23-024, 149-23-025, 149-23-026 and 149-23-027, located approximately just west of I-

1 17 and between Thunderbird Rd. and Sweetwater Avenue, Phoenix, Arizona. Interest  
2 accrues on the MCT secured tax claim at the statutory rate of 16% per annum, if not  
3 timely paid. See 11 U.S.C. § 511 and A.R.S. § 42-18053.

4  
5 In addition, on January 1, 2011, property tax liens attached to any real property in  
6 Maricopa County owned by the Debtors to secure payment of real property taxes due in  
7 2011. A.R.S. § 42-17153. The 2011 real property taxes will be liquidated in amount  
8 around September 1, 2011 and constitute secured administrative expenses.

9 **1. No Provision for Lien Retention:**

10 Arizona law grants Maricopa County valid liens that are “prior and superior to all  
11 other liens and encumbrances on the property.” See A.R.S. § 42-17153. Section 11.3  
12 of the Plan provides that as of the Effective Date, the Debtor shall be revested with title  
13 to all property of its estate, “free and clear of all liens, Claims and interests, except to the  
14 extent provided in this Plan or in the Confirmation Order.” The Plan should include a  
15 provision for the retention of MCT’s property tax liens securing the payment of the MCT  
16 secured tax claim and any post-petition administrative tax claims.

17 **2. Post-Petition Interest:**

18 The Plan fails to provide for the accrual of post-petition interest on the MCT  
19 secured tax claim. The Plan provides in Section 8.4 that “Unless otherwise specifically  
20 provided for in this Plan, the Confirmation Order or the Bankruptcy Code, postpetition  
21 interest shall not accrue or be paid on any Claim.” Section 5.4 of the Plan does not  
22 specifically provide for the accrual of statutory interest on MCT’s secured tax claim.

23  
24 The Arizona Revised Statutes provide that all taxes bear interest from the date of  
25 delinquency at the rate of 16% per annum. A.R.S. § 42-18053. Further, real property  
26 tax obligations are first priority, secured obligations. A.R.S. § 42-17153. There is no  
27 dispute that the properties securing the MCT secured tax claims are worth more than the  
28 amount of the respective claims. MCT is therefore entitled to interest on the MCT

1 secured tax claims pursuant to 11 U.S.C. §506(b) as an oversecured creditor. The  
2 Debtors are required to pay MCT (a) its entire secured claim and (b) post-petition  
3 interest on its secured claim until the claim is paid in full. See 11 U.S.C. §§ 506, 511,  
4 1129(a)(7) and 1129(a)(9). The Plan should provide for the accrual of post-petition  
5 statutory interest on the MCT secured tax claims.  
6

7 **3. Proposed Treatment:**

8 MCT proposes the following treatment of the MCT Tax Claims.

9 On the Effective Date, the Maricopa County Treasurer's  
10 secured tax claims will be allowed in the principal amount of  
11 the tax due, with interest at the statutory rate and without  
12 penalties. The Allowed Claims will accrue interest post-  
13 petition at the applicable statutory rate. On the Effective  
14 Date, the Reorganizaed Debtor shall pay to each holder of an  
15 Allowed Class 4 Claim, in Cash on the Effective Date, plus  
16 any accrued and accruing interest, to bring the tax obligations  
17 current. Maricopa County shall retain its liens for unpaid  
18 property taxes until such time as the taxes and any related  
19 interest is paid in full. Real and personal property taxes  
20 incurred post-petition shall be paid in the ordinary course of  
21 Debtor's business in accordance with state law, with interest  
22 to accrue at the statutory rate if not timely paid. Maricopa  
23 County is not required to file requests for payment of  
24 administrative expenses related to the payment of taxes  
25 incurred post-petition per 11 U.S.C. 503 § (b)(1)(D).  
26  
27  
28

19 Based on the foregoing, Maricopa County respectfully requests that the Court  
20 deny confirmation of the Plan unless Debtor further amends the Plan to (1) include a  
21 provision for the retention of MCT's tax liens securing the MCT secured tax laims and  
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any post-petition administrative tax claims, and (2) provide for the accrual of post-petition interest on the MCT secured tax claims.

RESPECTFULLY SUBMITTED this 11th day of May, 2011.

WILLIAM G. MONTGOMERY  
MARICOPA COUNTY ATTORNEY

BY: /s/ Lori A. Lewis  
LORI A. LEWIS  
Deputy County Attorney  
*Attorney for Maricopa County Treasurer*

ORIGINAL of the foregoing E-FILED  
this 11th day of May, 2011 with:

Clerk, United States Bankruptcy Court  
District of Arizona  
230 N. First Avenue, Suite 101  
Phoenix, Arizona, 85003-1706

COPY of the foregoing mailed/e-mailed,  
this 4th day of May, 2011, to:

U.S. Trustee's Office  
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/s/ Shelley Cottrell

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